

(9/2/94) BQC-94-057

To: Nursing Homes NH 39

From: Judy Fryback, Director  
Bureau of Quality Compliance

Subject: Guidance on Third Party Guarantee at Admission for Continued Stay

Attached to this memorandum is Regional Program Letter 94-18 issued by the federal Health Care Financing Administration (HCFA) and accompanying comments from Federal Register, Vol. 56, No. 187 dated September 26, 1991. This program letter clarifies HCFA's interpretation of federal regulation 42 CFR 483.12(d)(2) which states:

"The facility must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources."

The following areas are addressed in the attached program letter:

1. The prohibition of requiring a third party guarantee of payment as a condition of admission, expedited admission or continued stay applies to all residents and prospective residents of NFs and SNFs regardless of payment source (Medicaid, Medicare, other insurance or private pay.)
2. Payments which the facility may lawfully receive for the resident's stay in the facility are as follows:  
Payments made by:
  - the resident
  - a person legally authorized to disburse the resident's finances; the payment of which is made out of the resident's own funds
  - a third person volunteering payment
  - Medicare
  - Medicaid
  - insurance programs covering nursing home care.
3. A resident's family member, friend or individual authorized by law to dispense the resident's funds may not be required to pay expenses for the resident out of his or her own personal funds as a prerequisite of the resident's admission to or continued stay at the facility.
4. If the payment for care in the facility ceases, the facility may discharge the resident in accordance with regulations at 42 CFR 483.12(a). However, the facility can not hold the friend, family member or legal representative personally financially responsible for the unpaid cost of care.
5. The act of a third party who signs a contract with a NF or SNF promising payment out of his/her own personal funds is prohibited by law and regulation [CFR 483.12(d)(2).] Participating facilities affirming such a contract risk losing Medicare/Medicaid certification.
6. A facility may accept voluntary payment from a third party (whether legally responsible or not) but may not enforce a promise of payment which was accepted as a condition of continued stay.

If you are in need of any further clarification on this issue, please contact your Regional Field Operations Director.

Refer to: CR5

July 1994

**Division of Health Standards and Quality Regional Program Letter No. 94-18**

**Subject: Guidance on Third Party Guarantee**

The federal regulations at 42 CFR 483.12(d)(2) prohibits a skilled nursing facility (SNF) or nursing facility (NF) participating in Medicare/Medicaid from requiring a third party guarantee of payment as a condition of admission, expedited admission, or continued stay in a facility.

This policy was based on Congressional concern that a person, such as a relative, should not be forced to accept responsibility for charges incurred by a resident, unless that person is authorized by law to disburse the income or assets of the resident. Payments made by the resident, a person legally authorized to disburse the resident's finances, or a third person volunteering payment, are all lawful, as are the routine methods of payments through Medicare, Medicaid, or insurance programs offering coverage of nursing home care.

A resident's friend or family member can not be required to pay expenses out of his or her own funds for a resident as a prerequisite of admission or after a stay; however, circumstances may occur under which a friend or family member will VOLUNTARILY choose to pay for a resident's stay in a facility. If that friend or relative is required to sign a contract to make payments on behalf of the resident in order for the resident to be admitted or remain in a facility, the facility is in violation of the prohibition on third party guarantees of payment. If the payment for care ceases, the facility may discharge the resident in accordance with regulations at 42 CFR 483.12(a), but can not hold the friend or family member personally responsible for the unpaid cost of care. A skilled nursing facility or a nursing facility can, however, require a resident's legal representative to pay for a resident's stay out of the resident's funds and may investigate the availability of other avenues of third party payment (i.e., Medicare, Medicaid, private insurance).

Facilities may not discharge residents for failure to execute a new contract when payment status changes from Medicare to private pay or from private pay to Medicare. The only acceptable reasons for discharge are found at 42 CFR 483.12(a).

The act of a third party who signs a contract promising payment does, in effect, create a third party guarantee of payment and is expressly prohibited by law and regulation. The requirement of a signed contract from a third party on behalf of a current or prospective resident in an effort to secure admission or in an effort to secure continued stay, is a violation of the prohibition on third party guarantees of payment. To the extent that a participating facility affirms such a contract, it risks losing Medicare/Medicaid certification. Further, we believe such a contract would be void and unenforceable under the laws in most States because the contract would be contrary to federal law.

The issue of the applicability of the third party guarantee of payment rule to private pay admissions was addressed in the preamble to the final rule (56 FR 48841, September 26, 1991). In several places the statute makes a distinction between program beneficiaries and all other residents. However, it does not make this distinction in the provision that prohibits third party guarantees. Therefore, the prohibition applies to all residents and prospective residents of NFs and SNFs.

Except for clearly appropriate payments by Medicare, Medicaid, or other insurance programs offering coverage of nursing home care, we are not aware of any circumstances under which a participating facility may collect under a third party guarantee of payment. A participating facility, however, may accept voluntary payment from a third party (whether legally responsible or not), but may not enforce a promise of payment which was accepted as a condition of continued stay.

Please provide this information to your Long Term Care survey staff for their consideration in conducting SNF/NF surveys.

If you have questions, please contact your program representative or Sally Jo Wieling for Illinois, Minnesota or Wisconsin at (312) 353-8853, or Gwendolyn Michel at (312) 886-5211 for Indiana, Michigan or Ohio.

/s/ Charles Bennett  
Branch Chief  
Survey and Certification Review Branch  
Division of Health Standards and Quality

Enclosure